

COME NOW, Jack Dean, Billie Dean, Robert Payne, Marilyn Payne, John Dean and Genevieve Dean as Next Friends of Minors _____ and _____ as Representatives of the Estate of Jacob Dean, and Jennifer Payne as Representative of the Estate of Natalee Dean (collectively “Plaintiffs”), and file this Original Petition, Request for Disclosure and Temporary Restraining Order and Temporary Injunction against Aghorn Operating, Inc., Aghorn Oil & Gas, Inc. and Gilliam’s Aghorn Energy, Inc., and Sentinel Transportation, LLC (collectively “Defendants”), and would respectfully show this Honorable Court the following:

I.
DISCOVERY CONTROL PLAN

Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs file this petition under a Level 3 Discovery Control Plan.

II.
PARTIES

Plaintiff, Jack Dean is a resident of the State of Texas.

Plaintiff, Billie Dean is a resident of the State of Texas.

Plaintiff, Robert Payne is a resident of the State of Texas.

Plaintiff, Marilyn Payne is a resident of the State of Texas.

Plaintiffs John Dean and Genevieve Dean as Next Friends of Minors and
and as Representatives of the Estate of Jacob Dean are residents of the State
of Texas.

Plaintiff Jennifer Payne as Representative of the Estate of Natalee Dean is a resident of the
State of Texas.

Defendant, Gilliam's Aghorn Energy, Inc., is a domestic for-profit corporation doing
business in the State of Texas. Defendant's principal place of business is located in Ector County,
Texas. Defendant may be served through its registered agent: Frosty Gilliam, Jr. at 6351 East
Business 20, Odessa, Texas 79762, or wherever he may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was
conducting business using the assumed or common name of "Gilliam's Aghorn Energy" with
regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28
of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time
upon the motion or of the Court.

Defendant, Aghorn Oil & Gas, Inc., is a domestic for-profit corporation doing business in
the State of Texas. Defendant's principal place of business is located in Ector County, Texas.

Defendant may be served through its registered agent: Frosty Gilliam, Jr. at 6351 East Business 20, Odessa, Texas 79762, or wherever he may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Aghorn Oil & Gas” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion or of the Court.

Defendant, Aghorn Operating, Inc., is a domestic for-profit corporation doing business in the State of Texas. Defendant’s principal place of business is located in Ector County, Texas. Defendant may be served through its registered agent: Frosty Gilliam, Jr. at 6351 East Business 20, Odessa, Texas 79762, or wherever he may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Aghorn Operating” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion or of the Court.

Defendant, Sentinel Transportation, LLC is a foreign limited liability corporation doing business in the State of Texas. Defendant’s principal place of business is located in Harris County, Texas. Defendant may be served through its registered agent: Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Sentinel Transportation” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the

Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion or of the Court.

III. **JURISDICTION AND VENUE**

The Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Honorable Court as Plaintiffs seek aggregate monetary relief over \$1,000,000.00. Additionally, removal to federal court would be improper because this lawsuit does not involve a federal question, this lawsuit lacks diversity and/or because of the forum defendant rule.

Pursuant to Texas Civil Practice and Remedies Code section 15.002(a)(3), Harris County is the proper venue because it is the county where the principal places of business is located for Defendant Sentinel Transportation, LLC. Further, because Plaintiffs have established proper venue against one defendant, the Court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences, thus venue is proper in Harris County, Texas as to all Defendants in this case. TEX. CIV. PRAC. & REM. CODE § 15.005.

IV. **FACTUAL BACKGROUND**

On the evening of October 26, 2019, Jacob Dean responded to a call to check a pump house located at 2216 W. 49th St. in Odessa, Texas that was owned and operated by the Defendants. Jacob Dean did not return home in a timely manner and his wife, Natalee Dean, began calling him. Natalee Dean then went to the pump house to check on her husband. Natalee Dean took her two minor children and , aged 6 and 9, with her. After arriving at the location, Natalee Dean exited her vehicle, but left the children in the car. Natalee Dean walked up to the

pump house and was overtaken by Hydrogen Sulfide (“H₂S”) gas exposure. H₂S is an extremely toxic gas, it is known as a silent killer and a single breath of it can kill someone. Her husband, Jacob Dean, had already succumbed to exposure himself before her arrival. The children’s lives were spared because they remained in the car, but still had to receive medical care for exposure to H₂S. When deputies and EMS arrived on the scene, they noted and detected the presence of H₂S.

V.

CAUSES OF ACTION AGAINST DEFENDANTS

A. NEGLIGENCE

At the time and on the occasion in question, Defendants committed acts and omissions, which collectively and separately constituted negligence. Defendants had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendants breached that duty in one or more of the following ways:

- a. Failing to provide safety equipment to workers, including H₂S monitors;
- b. Failing to have properly functioning H₂S monitors and alarms on the premises;
- c. Failing to properly maintain the production equipment on site to prevent H₂S leaks;
- d. Failing to provide adequate training;
- e. Failing to provide a safe workplace;
- f. Failing to warn of a dangerous condition;
- g. Violating OSHA regulations and standards; and
- h. Other acts or omissions deemed negligent.

These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Plaintiffs herein.

B. PREMISES LIABILITY

Defendants owned, occupied, and/or controlled the area where Jacob Dean and Natalee were killed. The condition of the area where Jacob Dean and Natalee Dean were killed posed an unreasonable risk of harm, and Defendants had actual knowledge, or reasonably should have known, of the unreasonably dangerous condition. Moreover, Jacob Dean and Natalee Dean did not have actual knowledge of the unreasonably dangerous condition.

Jacob Dean and Natalee Dean were invitees who entered Defendants' premises with their knowledge and for their benefit. Defendants had a duty to either warn of this unreasonably dangerous condition or make the unreasonably dangerous condition reasonably safe. Defendants breached this duty by failing to warn of this known unreasonably dangerous condition. Defendants also breached this duty by failing to make this known unreasonably dangerous condition reasonably safe. Defendants' breach of these duties proximately caused Plaintiffs' injuries and damages.

C. GROSS NEGLIGENCE

Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendants, taken singularly or in combination, constitute gross negligence and were the proximate cause of Plaintiffs' injuries and damages. Defendants' acts and/or omissions, when viewed objectively from Defendants' standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

VI.
SURVIVAL ACTION

As a result of the wrongful conduct of Defendants as described above, Decedents suffered physical pain and suffering and mental anguish prior to their deaths. Additionally, their Estates incurred medical and funeral expenses, for which Defendants are liable. The Representatives of Decedents' Estates, John Dean, Genevieve Dean and Jennifer Payne, assert the above-pled causes of action against Defendants on behalf of Decedents' Estates pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021.

As a result of the wrongful conduct of Defendants, this survival action is brought for the following damages sustained by Jacob Dean and Natalee Dean, which survive their untimely deaths:

- a. Past physical pain and mental anguish;
- b. Funeral expenses; and
- c. Medical expenses.

VII.
WRONGFUL DEATH

Because the wrongful conduct of Defendants, and their agents and employees described above, caused the death of Decedents, and because Decedents would have a cause of action against Defendants for their injuries had they lived, Plaintiffs Jack Dean, Billie Dean, Robert Payne, Marilyn Payne, John Dean and Genevieve Dean as Next Friends of Minors and

have a cause of action against Defendants to recover damages for the wrongful death of Jacob Dean and Natalee Dean pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002 and 71.003. These damages include:

- a. Past and future pecuniary losses;
- b. Past and future loss of companionship and society;
- c. Past and future mental anguish; and
- d. Loss of inheritance.

VIII.
DAMAGES

As a result of Defendants' actions and/or inactions, Plaintiffs bring this lawsuit for the following damages:

- a. Past physical pain and suffering of Decedents;
- b. Past mental anguish of Decedents;
- c. Decedent's medical and funeral expenses;
- d. Past and future medical expenses;
- e. Past and future pecuniary and nonpecuniary wrongful death damages including the loss of companionship and society, mental anguish, and loss of inheritance;
- f. Court costs;
- g. Exemplary damages; and
- h. Any and all other damages, both general and special, at law and in equity, to which Plaintiffs may be justly entitled.

Plaintiffs also seek both prejudgment and post judgment interest as allowed by law, for all costs of court, actual damages, and all other relief, both at law and in equity, to which Plaintiffs may be entitled.

IX.
PRESERVATION OF EVIDENCE

Plaintiffs hereby request and demand that Defendants and their agents, attorneys, and insurers preserve and maintain all evidence pertaining to any claim or defense to the incident made

the basis of this lawsuit, or the damages resulting therefrom, including but not limited to photographs; videotapes; audiotapes; recordings; business records, memoranda; files; facsimiles; e-mails; voicemails; text messages; sales receipts; invoices; commission records; tax records; telephone messages; telephone calling card transactions; calendar entries; diary entries; any incident report; and any electronic image, data or information related to the referenced incident. Failure to maintain such items, including but not limited any other items previously requested and demanded to be preserved before the subject lawsuit ensued, will constitute a “spoliation” of the evidence and may subject Defendants to sanctions.

X.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

Based on reasonable information and belief, Plaintiffs assert that the Defendants may change, alter, destroy or modify the evidence related to the release of H₂S, including, but not limited to, the premises of the pumphouse where Jacob Dean and Natalee Dean were killed, unless this Court enters a Temporary Restraining Order, restraining Defendants from changing, altering, destroying or modifying any physical evidence, as the evidence constitutes tangible, relevant evidence materially related to the incident complained of having resulted in severe injuries to Plaintiffs. In order for Plaintiffs to properly investigate and pursue their claim, and recover damages and see that justice is done, this Court should restrain Defendants, their agents, servants, employees, contractors, contract employees, attorneys and those acting in concert with or in representation of said Defendants from changing, altering, destroying or modifying the evidence related to the release of H₂S, including, but not limited to, the pumphouse and wellsite where Plaintiffs were killed, which is located at 2216 W. 49th Street in Odessa, Texas.

If Defendants are permitted to change, alter, destroy or modify any evidence related to the H2S release, Plaintiffs in this lawsuit will lose the opportunity to properly inspect the evidence, and will be unable to prosecute their claim and thus will be deprived of adequate remedies at law.

There is no adequate remedy at law available to Plaintiffs to prevent Defendants from changing, altering, modifying, or destroying the evidence at issue, unless the Court grants immediate relief restraining such conduct. Plaintiffs pray that this Court enter a Temporary Restraining Order preserving the status quo by restraining Defendants from in any way changing, altering, destroying or modifying, the evidence related to the H2S release, including, but not limited to, the pumphouse and well site where Jacob Dean and Natalee Dean were killed, as well as moving, removing, or altering any and all tangible evidence within the pump house and well site in question. Plaintiffs also seek an order preserving:

- (1) Any and all photographs and videotapes of the scene of the incident, parties or equipment involved in the incident;
- (2) Any and all stickers, safety slogans, warnings, etc. attached to or placed on any equipment involved in the incident;
- (3) Any and all documents/communications regarding the scene of the incident, parties or equipment involved in the incident;
- (4) Any and all documents/records relating to investigations of the incident, including but not limited to OSHA records;
- (5) Any and all H2S monitors at the site be preserved in their current state;
- (6) Any and all emails, electronic data, documents, statements, diaries, calendar entries, memos, incident reports, call slips or telephone messages, text messages, facsimiles, voicemail messages and correspondence related to the incident; and
- (7) Any and all records, inspection reports, policies and procedures, actual audiotape recording or any transcript of any recorded statements, mobile radio and dispatch records pertaining to the incident.

The foregoing tangible and physical evidence is relevant and reasonably necessary to determine the cause of the incident made the basis of this suit, the loss of which would irreparably harm Plaintiffs.

XI.

REQUEST FOR HEARING ON TEMPORARY RESTRAINING ORDER

Plaintiffs further pray for this Court to set a hearing on Plaintiffs' Application for Temporary Restraining Order and subsequent injunctive relief in this matter.

XII.

REQUEST FOR INSPECTION

Plaintiffs also pray that this Court issue an Order permitting the Plaintiffs' attorneys and investigative staff, including but not limited to, consulting experts, to have access to the incident scene and area where the building collapse occurred to inspect, photograph, and film the scene. Such access for the purpose of inspection, photographing and filming is essential in order for Plaintiffs to prepare their case and to see that justice is done.

XIII.

TRCP 193.7

Pursuant to Texas Rule of Civil Procedure 193.7, Defendants are hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial proceedings and at trial and will be deemed authentic unless they make valid objections to authenticity pursuant to this rule.

XIV.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194.1 *et seq.* of the Texas Rules of Civil Procedure, Plaintiffs hereby request that Defendants disclose the information or material described in Rule 194.2 within **fifty (50) days** of the service of this request at the office of the undersigned.

XV.
PREJUDGMENT INTEREST

Plaintiffs seek prejudgment interest pursuant to § 304.102 of the TEXAS FINANCE CODE.

XVI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Plaintiffs recover damages from Defendants in accordance with the evidence; that Plaintiffs recover costs of the court herein expended; that Plaintiffs recover interest to which Plaintiffs are justly entitled under the law, both prejudgment and post-judgment; that Plaintiffs recover actual damages; that Plaintiffs are entitled to recover compensatory damages; that Plaintiffs recover punitive damages; and for such other further relief, both general and specific, both in law and in equity to which Plaintiffs may be justly entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
SORRELS, AGOSTO & AZIZ**

/s/ Muhammad S. Aziz

MUHAMMAD S. AZIZ

State Bar No. 24043538

KARL P. LONG

State Bar No. 24070162

800 Commerce Street

Houston, Texas 77002

(713) 222-7211 – Telephone

(713) 225-0827 – Facsimile

maziz@awtxlaw.com

klong@awtxlaw.com

-AND-

JOHN K. ZAID & ASSOCIATES

/s/ John K. Zaid

JOHN K. ZAID

State Bar No. 24037764

JOE I. ZAID

State Bar No. 24085675

RYAN E. BILL

State Bar No. 24087038

16951 Feather Craft Lane

Houston, Texas 77058

(281) 333-8959- Telephone

(888) 734-1236- Facsimile

john@zaidlaw.com

joe@zaidlaw.com

ryan@zaidlaw.com

service@jkz.legal

-AND-

J. D. SILVA & ASSOCIATES, PLLC

JOHNATHAN D. SILVA

State Bar No. 24097258

16951 Feather Craft Lane

Houston, Texas 77058

(281) 971-3200- Telephone

(877) 993-8337- Facsimile

johnathan@jdsilvalaw.com

ATTORNEYS FOR PLAINTIFFS